

1 JOHN D. MUNDING
2 MUNDING, P.S.
3 1610 W. Riverside Avenue
4 Spokane, WA 99201
5 (509) 624-6464
6 John@mundinglaw.com

7 *Chapter 7 Trustee*

8 **UNITED STATES BANKRUPTCY COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 In re:

Case No. 16-000843-FLK7

11 **ALEXANDER ORTOLANO,**

Chapter 7

12 Debtor.

13 **CHAPTER 7 TRUSTEE'S**
14 **OBJECTION TO DEBTOR'S**
15 **AMENDED CLAIM'S OF**
16 **EXEMPTIONS (ECF No. 100) AND**
17 **NOTICE THEREOF**

18 TO: The Debtor, Alexander Ortolano.
19 AND TO: The Debtor's Counsel, William L. Hames.
20 AND TO: US Trustee and all Interested Parties.

21 PLEASE TAKE NOTICE that the Chapter 7 Trustee hereby objects to the
22 Debtor Alexander Ortolano's ("Debtor") Amended Claims of Exemption (ECF No.
23 100) in certain property as set forth below.

24
25
26
OBJECTION TO DEBTOR'S AMENDED
CLAIM OF EXEMPTIONS AND NOTICE THEREOF – 1

MUNDING, P.S.
1610 W. RIVERSIDE AVENUE
SPOKANE, WA 99201
(509) 624-6464

I. OBJECTION

John D. Munding, the duly appointed, qualified and acting Chapter 7 Trustee ("Trustee") for the bankruptcy estate of Alexander Ortolano, hereby objects to the debtor Alexander Ortolano's ("Debtor") Amended Claims of Exemption filed on August 23, 2018. (ECF No.s 98, 99, and 100). Specifically, the Trustee objects to the Debtor's claims of exemption in the real and personal property identified as follows:

<u>Property</u>	<u>Claimed Exemption</u>	<u>Amount</u>
• Single-family home	RCW 6.13.010, 6.13.020, 6.13.030	\$125,000
• Community First Bank, Acct. ending 6992 – Closed	RCW 6.15.010(1)(c)(ii)	\$0.00
• Community First Bank, Acct. ending 1469 – Closed	RCW 6.15.010(1)(c)(ii)	\$0.00
• Community First Bank, Acct. ending 8429 – Closed	RCW 6.15.010(1)(c)(ii)	\$0.00
• Alexander Capital – Closed	RCW 6.15.010(1)(c)(ii)	\$0.00
• Chase 7053 W post-separation	RCW 6.15.010(1)(c)(ii)	\$132.00
• Wells Fargo Acct. ending 5350	RCW 6.15.010(1)(c)(ii)	\$124.98
• Wells Fargo Acct. ending 7772	RCW 6.15.010(1)(c)(ii)	\$105.52
• Gesa Community Credit Union Acct. ending 1000	RCW 6.15.010(1)(c)(ii)	\$0.00
• Key Bank Acct. ending 1328 wife	RCW 6.15.010(1)(c)(ii)	\$181.00

OBJECTION TO DEBTOR'S AMENDED
CLAIM OF EXEMPTIONS AND NOTICE THEREOF – 2

MUNDING, P.S.
1610 W. RIVERSIDE AVENUE
SPOKANE, WA 99201
(509) 624-6464

	<u>Property</u>	<u>Claimed Exemption</u>	<u>Amount</u>
1			
2	• Key Bank Acct. ending 1020 wife	RCW 6.15.010(1)(c)(ii)	\$491.00
3	• RossGoldberg Canadian shares	RCW 6.15.010(1)(c)(ii)	\$0.00
4	• Arbor Health Care for Women (100%)	RCW 6.15.010(1)(c)(ii)	\$0.00
5	• Ideal Protein (100%)	RCW 6.15.010(1)(c)(ii)	\$0.00
6	• Roky Operating LLC	RCW 6.15.010(1)(c)(ii)	\$0.00
7			
8	• Vanguard Voyager 9187	RCW 6.15.020(3)	\$1,397.00
9	• Simple IRA in name of Alex 3989	RCW 6.15.020(3)	\$24,762.69
10	• Wells Fargo IRA 0684	RCW 6.15.020(3)	\$13,368.00
11	• Wells Fargo IRA 1431	RCW 6.15.020(3)	\$9,043.50
12	• Wells Fargo IRA 1706	RCW 6.15.020(3)	\$23,317.00
13	• Wells Fargo IRA 3813	RCW 6.15.020(3)	\$8,574.00
14	• Wells Fargo IRA 9538	RCW 6.15.020(3)	\$2,373.00
15	• Anticipated tax return		\$0.00
16	• USAA Whole Life Policy 1626	RCW 48.18.410	\$78,086.00
17	• USAA Whole Life Policy 3173	RCW 48.18.410	\$5,181.00
18	• USAA Term Life Policy 7339	RCW 48.18.410	\$0.00
19	• Funds moved out of country CFB 8429	RCW 6.15.010(1)(c)(ii)	\$0.00
20	• Funds moved out of country CFB 1469	RCW 6.15.010(1)(c)(ii)	\$0.00
21			
22			
23			
24			
25			
26			

OBJECTION TO DEBTOR'S AMENDED
CLAIM OF EXEMPTIONS AND NOTICE THEREOF - 3

MUNDING, P.S.
1610 W. RIVERSIDE AVENUE
SPOKANE, WA 99201
(509) 624-6464

<u>Property</u>	<u>Claimed Exemption</u>	<u>Amount</u>
• Funds moved out of country CFB 6692	RCW 6.15.010(1)(c)(ii)	\$0.00
• Roky Caldera Gold Investors LLC 2016 .434783%	RCW 6.15.010(1)(c)(ii)	\$0.00
• KKR Financial Holdings LLC	RCW 6.15.010(1)(c)(ii)	\$0.00
• HL Sinclair LLC/Chase 2160 & 1320	RCW 6.15.020(3)	\$1,773.50
• Mutton L & T LLC, dissolved, no value	RCW 6.15.010(1)(c)(ii)	\$0.00

II. BASIS

A. Factual and Procedural Background

1. The Debtor altered his voluntary petition in this Chapter 7 bankruptcy proceeding on March 17, 2016. (ECF No. 1). The Debtor is a physician and believed to be practicing medicine in the state of Florida.

2. The Debtor's original Schedules A, B, and C were filed on March 18, 2016. (ECF No. 7).

3. Attached Schedules A, B, and C regarding the Debtor stated under penalty of perjury that:

a. He did not own an interest in real property and lived in an apartment on the date his bankruptcy petition was filed.

1 b. He owned limited personal property as described in Schedule B (ECF
2 No. 7) and as also described in Appendix "A" attached hereto.

3 4. The Debtor originally claimed exemptions in personal property utilizing the
4 federal exemptions. *See* 11 U.S.C. § 522(b) and § 522(d); *see also* Schedule C. (ECF
5 No. 7).
6

7 5. The Debtor attended and was examined at his 341 creditors meeting, conducted
8 on May 6, 2016. (ECF No. 15).
9

10 6. On August 23, 2018, 2 years and 5 months later, the Debtor amended his
11 Schedules A, B, and C to identify previously undisclosed assets and claim exemptions
12 in such property utilizing exemptions under Washington State law. *See* Amended
13 Claims of Exemption. (ECF No. 98, 99, and 100); *see also* Appendix "A" hereto.
14

15 7. The Trustee hereby objects to the Debtor's Amended Claims of Exemption,
16 requests an opportunity to conduct further discovery, and requests that the Counsel set
17 this contested matter for evidentiary hearing.
18

19 **B. Legal Analysis**
20

21 The Bankruptcy Code authorizes a debtor to exempt certain assets. 11 U.S.C. §
22 522(b). Washington residents filing for bankruptcy must choose either the from two
23 set of exemption options under Washington state law or under federal law. *See* 11
24 U.S.C. § 522(b)(1).
25
26

1 Bankruptcy Rule 1009 provides that a “schedule...may be amended by the
2 debtor as a matter of course *at any time* before the case is closed,” Fed. R. Bankr. P.
3 1009(a) (emphasis added), and the Ninth Circuit has applied this right to the claim of
4 exemptions. *See Martinson v. Michael (In re Michael)*, 163 F.3d 526, 529 (9th Cir.
5 1998); *see also Tyner v. Nicholson (In re Nicholson)*, 435 B.R. 622, 630 (9th Cir. BAP
6 2010).

7
8
9 Although exemptions and their amendments are liberally construed, a judicially
10 created limit on this latitude and flexibility arose. Bankruptcy courts throughout the
11 country, including courts in the Ninth Circuit, denied leave to amend or disallowed a
12 claimed exemption if the trustee or other party in interest timely objected and showed
13 that either: (1) the debtor acted in bad faith; or (2) creditors were prejudiced. *See*
14 *Michael*, 163 F.3d at 529 (adopting the test set forth in *Doan v. Hudgins (In re Doan)*,
15 672 F.2d 831 (11th Cir. 1982)).
16
17

18 1. The Debtor’s Claims of Exemption Should be Disallowed Under Washington
19 Law.
20

21 *Law v. Siegel* makes clear that section 105(a) is not the only basis for denial of
22 an exemption. Where, as here, a debtor claims a state-created exemption, the scope of
23 the exemption – and any basis for denial of the exemption – must be found in state
24 law. “It is of course true that when a debtor claims a *state-created* exemption, the
25
26

1 exemption's scope is determined by state law, which may provide that certain types of
2 debtor misconduct warrant denial of the exemption." *Law*, 134 S. Ct. at 1196-97.

3 The Ninth Circuit Bankruptcy Appellate Panel has also held that after *Law v.*
4 *Siegel*, bankruptcy courts must look to state law and not section 105(a) in determining
5 whether there is a basis to disallow an exemption. *Elliott*, 523 B.R. at 192, *Gray v.*
6 *Warfield (In re Gray)*, 523 B.R. 170, 175 (9th Cir. BAP 2014).

7 The *Gray* case is particularly instructive here. The debtors did not list as an
8 asset or claim as exempt several months of rent prepaid to their landlord. *Gray*, 523
9 B.R. at 171. It was not until after the trustee questioned the debtors at the 341(a)
10 meeting that the debtors amended their schedules to add the prepaid rent as an asset
11 and claim an exemption therein. *Id.* The trustee filed an objection to the debtors'
12 amended exemption based on the debtors' failure to previously disclose the asset and
13 claim an exemption. *Id.* at 172. Based on *Law v. Siegel*, the panel reversed the
14 bankruptcy court's decision sustaining the trustee's objection based on the debtors'
15 bad faith. *Id.* at 175. In remanding the case, the panel specifically instructed the
16 bankruptcy court to look at state law "to determine whether under Arizona law
17 equitable considerations may be used to disallow exemptions." *Id.*

18 "The doctrine of equitable estoppel, often referred to as fraudulent concealment,
19 is based on the principle that a party should not be allowed to benefit from its own
20
21
22
23
24
25
26

1 wrongdoing.” *Estate of Amaro v. City of Oakland*, 653 F.3d 808, 813 (9th Cir. 2011)
2 (internal quotation marks omitted). “The doctrine focuses primarily on the actions
3 taken by the defendant in preventing a plaintiff from filing suit.” *Id.* (internal
4 quotation marks omitted). Under federal law, the plaintiff must demonstrate the
5 following elements of equitable estoppel: “(1) knowledge of the true facts by the party
6 to be estopped, (2) intent to induce reliance or actions giving rise to a belief in that
7 intent, (3) ignorance of the true facts by the relying party, and (4) detrimental
8 reliance.” *Id.* (quoting *Bolt v. United States*, 944 F.2d 603, 609 (9th Cir. 1991)).
9
10

11 In Washington State, the elements of equitable estoppel are:
12

13 (1) an admission, statement, or act inconsistent with the claim
14 afterwards asserted, (2) action by the other party on the faith of such
15 admission, statement, or act, and (3) injury to such other party
16 resulting from allowing the first party to contradict or repudiate such
17 admission, statement, or act.
18

19 *Harbor Air Serv., Inc. v. Board of Tax Appeals*, 88 Wn.2d 359, 366-67, 560 P.2d 1145
20 (1977). Estoppel can arise through silence, as well as statements, when one has a duty
21 to speak out. *Kessinger v. Anderson*, 31 Wn.2d 157, 169, 196 P.2d 289 (1948)
22 (quoting 21 C.J. Estoppel § 116, at 1113 (1920)). However, no matter how
23
24
25
26

1 communicated, the assertion on which estoppel is based must induce reliance by the
2 other party. *In re Estate of Boston*, 80 Wn.2d 70, 76, 491 P.2d 1033 (1971).

3 Here, all of the elements of the equitable estoppel are present in this case. Based
4 on Washington State equitable estoppel, the Debtor's Amended Claims of Exemption
5 in real and personal property should be disallowed.
6

7 2. Debtor is Not Entitled to Claim a Homestead Exemption in 250 Meadow Ridge
8 Loop.
9

10 The Debtor is not entitled to claim a homestead exemption under Washington
11 Revised Code §§ 6.13.010, 6.13.020, or 6.13.030 for the real property located at 250
12 Meadow Ridge Loop, Richland, WA 99352. A Washington homestead consists of
13 real or personal property that must be actually intended or used as the principal home
14 of the owner. Wash. Rev. Code § 6.13.010(1) (2004). At the time the bankruptcy
15 petition was filed, the Debtor did not use or intend to use the real property located 250
16 Meadow Ridge Loop, Richland, Washington, as the principal home of the owner, or
17 occupy the residence as owner.
18
19
20

21 3. Debtor's Concealment of Whole Life Policies and Bank Accounts Warrants
22 Denial of Claims of Exemption.
23

24 The USAA Whole Life Policies are not exempt under Washington Revised
25 Code § 48.18.410 to the extent the policies are payable to the Debtor and to the extent
26

1 said policies were purchased, handled and/or concealed with the intent to defraud
2 creditors. Furthermore, the "Funds moved out of country CFB" are not adequately
3 described in Debtor's Amended Schedules. Therefore, the Debtor is not entitled to the
4 claimed exemptions.
5

6 4. Federal Income Tax Refund is not Exempt Under Washington Law.

7
8 The Debtor originally claimed a Federal income tax refund of \$12,725, exempt
9 pursuant to 11 U.S.C. § 522(d)(5), upon which the Trustee relied. The Debtor has now
10 amended his schedules to define the tax return as \$0.00, and not claiming any portion
11 as exempt. The Debtor must account for and turn over the anticipated tax refund in the
12 amount of \$12,725 as it is no longer exempt.
13

14 **III. RELIEF REQUESTED**

15
16 Wherefore, the Chapter 7 Trustee requests that the Court sustain the objections
17 to the Debtor's Amended Claim of Exemptions and grant further relief as the Court
18 deems appropriate, just, and equitable.

19 DATED this 21st day of September, 2018.
20

21 MUNDING, P.S.

22 /s/ John D. Munding

23 John D. Munding, WSBA No. 21734
24 Chapter 7 Trustee for Bankruptcy Estate
25
26

APPENDIX “A”

Ortolano, Alexander, Case No. 16-00843 – Schedule of Amended Exemptions

Item	Original 3/17/18 – Sch A/B Description	Original 3/17/18 – Sch C Amount	Amended 8/23/18 – Sch A/B Description	Amended 8/23/18 – Sch C Amount	Law Referenced
1	None	None	Single-family home	\$125,000.00	RCW 6.13.010, 6.13.020, 6.13.030
3	Yes – Nissan Leaf	\$1,715.00	Yes – Nissan Leaf	\$1,715.00	RCW 6.15.010(1)(c)(iii)
4	None	None	None	None	
6	None	None	None	None	
7	Yes – Cell Phone	\$200.00	Yes – Cell Phone	\$200.00	RCW 6.15.010(1)(c)(i)
8	None	None	None	None	
9	None	None	None	None	
10	None	None	None	None	
11	Yes – Clothes	\$100.00	Yes – Clothes	\$100.00	RCW 6.15.010(1)(a)
12	None	None	None	None	
13	None	None	None	None	
14	None	None	None	None	
17.1	None	None	Community First Bank, Acct. ending 6992 – Closed (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
17.2	None	None	Community First Bank, Acct. ending 1469 – Closed (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
17.3	None	None	Community First Bank, Acct. ending 8429 – Closed (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
17.4	None	None	Alexander Capital – Closed (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
17.5	None	None	Chase 7053 W post- separation (1/2 interest)	\$132.00	RCW 6.15.010(1)(c)(ii)
17.6	None	None	Wells Fargo Acct. ending 5350 (1/2 interest)	\$124.98	RCW 6.15.010(1)(c)(ii)
17.7	None	None	Wells Fargo Acct. ending 7772 (1/2 interest)	\$105.52	RCW 6.15.010(1)(c)(ii)
17.8	None	None	Gesa Community Credit Union Acct. ending 1000 (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
17.9	None	None	Key Bank Acct. ending 1328 wife (1/2 interest)	\$181.00	RCW 6.15.010(1)(c)(ii)
17.10	None	None	Key Bank Acct. ending 1020 wife (1/2 interest)	\$491.00	RCW 6.15.010(1)(c)(ii)
18	None	None	RossGoldberg Canadian shares (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
19.1	Interest in Arbor Healthcare for Woman LLC	\$0.00	Interest in Arbor Healthcare for Woman LLC	\$0.00	RCW 6.15.010(1)(c)(ii)
19.2	None	None	Arbor Health Care for Women (100%) (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
19.3	None	None	Ideal Protein (100%) (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
19.4	None	None	Roky Operating LLC (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
20	None	None	None	None	
21.1	401k	\$60,000.00	401k	\$60,000.00	RCW 6.15.020(3)

21.2	None	None	Vanguard Voyager 9187 (1/2 interest)	\$1,397.00	RCW 6.15.020(3)
21.3	None	None	Simple IRA in name of Alex 3989 (1/2 interest)	\$24,762.69	RCW 6.15.020(3)
21.4	None	None	Wells Fargo IRA 0684 (1/2 interest)	\$13,368.00	RCW 6.15.020(3)
21.5	None	None	Wells Fargo IRA 1431 (1/2 interest)	\$9,043.50	RCW 6.15.020(3)
21.6	None	None	Wells Fargo IRA 1706 (1/2 interest)	\$23,317.00	RCW 6.15.020(3)
21.7	None	None	Wells Fargo IRA 3813 (1/2 interest)	\$8,574.00	RCW 6.15.020(3)
21.8	None	None	Wells Fargo IRA 9538 (1/2 interest)	\$2,373.00	RCW 6.15.020(3)
22	None	None	None	None	
23	None	None	None	None	
24	None	None	None	None	
25	None	None	None	None	
26	None	None	None	None	
27	None	None	None	None	
28	Anticipated tax return	\$12,725.00	Anticipated tax return	\$0.00	
29	None	None	None	None	
30	None	None	None	None	
31.1	None	None	USAA Whole Life Policy 1626 (1/2 interest)	\$78,086.00	RCW 48.18.410
31.2	None	None	USAA Whole Life Policy 3173 (1/2 interest)	\$5,181.00	RCW 48.18.410
31.3	None	None	USAA Term Life Policy 7339 (1/2 interest)	\$0.00	RCW 48.18.410
32	None	None	None	None	
33	None	None	None	None	
34	None	None	None	None	
35.1	None	None	Funds moved out of country CFB 8429 (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
35.2	None	None	Funds moved out of country CFB 1469 (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
35.3	None	None	Funds moved out of country CFB 6692 (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
35.4	None	None	Roky Caldera Gold Investors LLC 2016 .434783% (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
35.5	None	None	KKR Financial Holdings LLC (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)
35.6	None	None	HL Sinclair LLC/Chase 2160 & 1320 (1/2 interest)	\$1,773.50	RCW 6.15.020(3)
35.7	None	None	Mutton L & T LLC, dissolved, no value (1/2 interest)	\$0.00	RCW 6.15.010(1)(c)(ii)

Item Key:

Item #	Description
1	Residence, Building, Land, or Other Real Estate You Own or Have an Interest In
3	Cars, vans, trucks, tractors, sport utility vehicles, motorcycles
4	Watercraft, aircraft, motor homes, ATVs and other recreational vehicles, other vehicles, and accessories
6	Household goods and furnishings
7	Electronics
8	Collectibles of value
9	Equipment for sports and hobbies
10	Firearms
11	Clothes
12	Jewelry
13	Non-farm animals
14	Any other personal and household items you did not already list, including any health aids you did not list
16	Cash
17	Deposits of money
18	Bonds, mutual funds, or publicly traded stocks
19	Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture
20	Government and corporate bonds and other negotiable and non-negotiable instruments
21	Retirement or pension accounts
22	Security deposits and prepayments
23	Annuities
24	Interests in an education IRA, in an account in a qualified ABLE program, or under a qualified state tuition program
25	Trusts, equitable or future interests in property (other than anything listed in line 1), and rights or powers exercisable for your benefit
26	Patents, copyrights, trademarks, trade secrets, and other intellectual property
27	Licenses, franchises, and other general intangibles
28	Tax refunds owed to you
29	Family support
30	Other amounts someone owes you
31	Interests in insurance policies
32	Any interest in property that is due you from someone who has died
33	Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment
34	Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims
35	Any financial assets you did not already list